clause. In the light of the previous decision, *supra*, and that in the Reading case it is difficult to see how any corporate relationship between a carrier and a manufacturing or producing company, in which there is unity of control through stock ownership or by means of a holding company, can keep without the prohibitions of the clause. It is submitted that unless there is absolute dissociation in management between the corporations, any form of corporate relationship between a carrier in interstate commerce and a producing company is in violation of the prohibitions of the clause.

J. G. L.

DIVORCE — RECRIMINATION. — "The term 'recrimination,' while not absolutely unknown in the other departments of our civil and criminal jurisprudence, is almost peculiar to divorce law. But the thing itself—the refusal of redress to a plaintiff who is himself at fault in that whereof he complains—is a familiar and fundamental principle in our entire legal system."[1] In other words, he who asks equity must do equity, he must come into court with clean hands.

In order to constitute an adequate defense by way of recrimination to a proceedings for divorce, the conduct complained of in the plaintiff must be such as would have entitled the defendant to a divorce on that ground.[2] Thus it has been frequently decided that adultery,[3] cruelty,[4] and desertion[5] when set up as recriminatory defenses, will bar an action for divorce, since these are all causes which in the respective jurisdictions would entitle the party in whose defense they are pleaded to an original decree of divorce.

It is rather startling to find the Michigan Supreme Court in a recently decided case[6] refusing a divorce sought on the ground of extreme cruelty, because the plaintiff wife was found to have been carrying on a clandestine correspondence with a young man. This clandestine correspondence, which it may confidently be said, would not be ground for divorce in any jurisdiction, was held by the court to be a sufficient recriminatory defense. The case[7] which was pointed to as authority for this decision was one in which the guilt of plaintiff and defendant had been so extreme that the court observed, "If a tenth part of the testimony of either party is to be believed, the other party has been guilty of the same misconduct as that charged. Neither party deserves

[1] Bishop: Marriage, Divorce & Separation.
[2] Epley v. Epley, 83 N. J. Eq. 214, 89 Atl. 1028 (1914).
[3] Decker v. Decker, 193 Ill. 285, 61 N. E. 1108 (1901); Earle v. Earle, 43 Oregon 293, 72 Pac. 976 (1903).
[4] Church v. Church, 16 R. I. 667, 19 Atl. 244 (1890).
[5] Coe v. Coe, 98 Mo. App. 472, 72 S. W. 707 (1903).
[6] Cowdrey v. Cowdrey, 178 N. W. 678 (Mich. 1920).
[7] Kellogg v. Kellogg, 171 Mich. 518, 137 N. W. 249 (1912).

particular consideration at the hands of the court." Plainly that case was in conformity with the general rule regarding recrimination, and no basis for the radical departure embodied in the recent decision.

In Illinois, desertion and cruelty are grounds for divorce *a vinculo matrimonii*. It has been held by the courts of Illinois that a right of action upon the ground of adultery is not affected by the fact of the plaintiff's previous desertion,[8] or extreme and repeated cruelty.[9] The position taken in this jurisdiction is, however, against the great weight of authority.[10] When other courts have considered matters far more serious than clandestine correspondence, but which were not themselves grounds for divorce, such as neglect of marital obligations,[11] personal violence,[12] and malicious turning wife out of doors,[13] the decisions have been that these did not raise valid defenses of recrimination. The attitude of the courts therefore is plainly to limit the defense of recrimination strictly to facts which themselves would sustain an action for divorce, some courts, as Illinois, going so far as to limit this defense to a charge of moral turpitude equal to that upon which the divorce is being sought; and not as in the Michigan case to allow the slightest misconduct to stand in the way of the relief demanded.

Our century is one which seems to favor a reasonable facility in the obtaining of divorce. It would appear, therefore, that the Michigan court has not only decided contrary to the great weight of authority, but in seizing upon this excuse for refusing the divorce, has also seen fit to exercise its discretion against this modern tendency.

S. B. R.

NEW TRIAL—CONSTITUTIONALITY OF PARTIAL NEW TRIAL ON DAMAGE QUESTION ONLY.—The Constitutionality under the Federal Constitution of a new trial limited to certain issues is considered for the first time in a recent case in the Circuit Court of Appeals for the Third Circuit.[1] The trial judge in a personal injury case had granted a new trial limited to the assessment of damages, which had been inadequate in the first trial. The Circuit Court held that such a partial new trial is in violation of the Seventh Amendment to the United States Constitution, preserving the right of trial by jury in Federal Courts.

[8] Huling v. Huling, 38 Ill. App. 144 (1890).
[9] Hughes v. Hughes, 133 Ill. App. 654 (1907).
[10] Note in 39 L. R. A. (n. s.) 1135.
[11] Cushman v. Cushman, 194 Mass. 38, 79 N. E. 809 (1907).
[12] Bailey v. Bailey, 67 N. H. 402, 29 Atl. 847 (1892).
[13] Ellett v. Ellett, 157 N. C. 161, 72 S. E. 861 (1911).
[14] Blickle v. Higbee, *supra*.

[1] McKeon v. Central Stamping Company, 264 Fed. 385 (U. S. C. C. A. 3rd Circuit, 1920).